

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1217 OF 2017

1. Sau. Harsha Liladhar Rane,
Age : 25 Years, Occ. Housework,
R/o. C/o Laxman Yadav Mahajan,
N-9, K-42, Pawan Nagar, CIDCO
Sambhaji Nagar, (Aurangabad) ..PETITIONER

VERSUS

1. Sau. Rupali Kailas Rane,
Age : 28 Years, Occ. Household,
R/o. Ganabappa Nagar, Dharangaon,
Tal. Dharangaon, Dist. Jalgaon
2. The State of Maharashtra. ..RESPONDENTS.

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Mr. A.G. Talhar, Advocate for the Petitioner.

Mr. V.B. Patil, Advocate for Respondent No.1.

Mr.G.O.Wattamwar, APP, for Respondent No.2

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CORAM : PRAKASH D.NAIK, J.

Date of reserving the Judgment : 08.11.2017

Date of pronouncing the Judgment : 21.12.2017

JUDGMENT

1. Heard learned counsel for the parties.
2. The petition takes exception to the prosecution initiated by

Respondent No.1 for the offence punishable under Section 500 of the Indian Penal Code. The petitioner has assailed the order dated 5th April, 2017, passed by the learned Additional Sessions Judge, Jalgaon in Criminal Revision Application No. 202 of 2015.

3. Respondent No.1 is the complainant in Summary Criminal Case No. 454 of 2015. The said complaint was filed on 17th August, 2015 before the Court of Judicial Magistrate, First Class, Dharangaon. Respondent No.1 is the sister-in-law of the petitioner (wife of the brother of the husband of petitioner).

4. Brief facts as alleged in the complaint are as follows :-

(a) The complainant is a reputed person. Her husband is in employment with Government. The family of the complainant is respected in the society.

(b) The accused is the sister in law of the complainant. Without any reason, the accused has held grudge against the complainant and her husband. There are differences between the accused and her husband, Shri. Liladhar Rane, which has resulted in initiating the Court proceedings, which are pending in the Court. The accused

presently is residing at her parental home.

(c) In March 2015, the husband of the accused had issued notice to the accused through his Advocate for restitution of conjugal rights. The said notice was replied by the accused on 4th April, 2015 through her Advocate. In the said reply, it was stated that her husband should discontinue his illicit relationship with his Sister-in-law and on that condition, she is willing to cohabit with her husband. The said reply was handed over by the husband of the accused to the complainant. She was mentally shocked to read the said reply.

(d) The reply forwarded by the accused was read by the family members of the complainant in her house as well as her relatives and by the family members of her brother-in-law, which has caused harm to the reputation of the complainant. The said reply has resulted in causing damage to the image of the complainant. At the relevant time, the complainant was pregnant and the reply has caused her enormous mental tension.

(e) The complaint was lodged to Dharangaon Police Station on 10th August, 2015, however, no action was taken by the police. The accused has deliberately made the averments in the reply with an

intention to cause harm to the reputation of the complainant in the society. Hence, the complaint was filed alleging the offence under Section 499 of the Indian Penal Code, punishable under Section 500 of the Indian Penal Code.

5. The learned Magistrate vide order dated 25th August, 2015 called the report under Section 202 of the Code of Criminal Procedure. The said report was called by considering the fact that the accused is residing beyond the jurisdiction of the trial Court.

6. The trial Court thereafter heard Advocate for the complainant and dismissed the complaint under Section 203 of the Code of Criminal Procedure. The trial Court was pleased to observe that the notice was issued to Shri. Liladhar Rane and the question of publication of the reply does not arise. It was also observed that the accused having made the said averments in "good faith" there was no intention to cause defamation of the complainant. The accused did not make publication of the allegations in the society. The complaint was dismissed on 26.10.2015.

7. Respondent No.1 challenged the said order by preferring Criminal Revision Application No. 202 of 2015 before the Court of District and Sessions Judge at Jalgaon. The Sessions Court vide order dated 5th April, 2017, allowed the revision application and set-aside the order dated 26th October, 2015, and restored the criminal complaint. The parties were directed to appear before the trial Court on 4th May, 2017. The Sessions Court has observed that the learned Magistrate has committed an error in holding that the imputations are made in good faith.

8. In pursuance to the aforesaid order, the learned Judicial Magistrate, First Class, Dharangaon, issued the process against the accused for the offence punishable under Section 500 of the Indian Penal Code. The learned Magistrate relied upon observations of the Sessions Court and had issued the process. The petitioner has therefore, approached this Court challenging the said proceedings.

9. In accordance with the order dated 20th September, 2017, passed in these proceedings, the parties were heard for final disposal of this

petition.

10. The learned counsel for the petitioner advanced the following submissions :-

(I) The Revisional Court had committed an error in setting-aside the order passed by the Trial Court dismissing the complaint under Section 203 of the Code of Criminal Procedure. The Sessions Court failed to take into consideration the mandate of Sections 499 and 500 of the Indian Penal Code.

(II) The learned Sessions Court has not considered the fact that the main dispute was between petitioner and her husband. The reply was forwarded by the accused to her husband and there is no question of publication of the said statements so as to defame the complainant in the society. This fact is over looked by the Sessions Court.

(III) The Sessions Court failed to appreciate that matrimonial dispute was going on between Liladhar Rane the husband of the petitioner and the petitioner and the statement was made in the reply forwarded to the husband. It is submitted that the reply was not addressed to any other person and hence the question of defamation

of Respondent No.1 does not arise.

(IV) The Sessions Court considered the fact that alleged averments were in reply to the notice forwarded by the husband of the accused, wherein the accused has shown inclination to cohabit with her husband subject to husband destituting from continuing illicit relationship with his Sister-in-law. It is submitted that averments are required to be considered in the context in which the same are made and there was no intent to defame the complainant. The main ingredients to constitute the offence of the defamation is that the imputation must be made with intent to defame. On reading averments, it appears that the wife was trying to maintain her matrimonial relationship subject to her husband refraining from continuing alleged relationship with sister-in-law.

(V) The finding recorded by the Sessions Court in respect of address, by mentioning " care of", the Court has committed an error since the said observation is contrary to the record. The Court did not verify the documents while making such observations. Notice issued by the husband of the accused dated 25th March, 2015

disclosing two addresses one at Pune and another at Nande Tq. Dharangaon was not considered by the Sessions Court. It is submitted that, there was no reason to set-aside the order of dismissal of the complaint. It is further submitted that the complaint does not make out offence under Section 499 of the Indian Penal Code and, therefore, order issuing process as well as proceeding initiated against the petitioner be quashed and set-aside.

(VI) The learned counsel for the petitioner relied upon following decisions in support of his arguments :-

- (a) *Sudhir Parihar Vs. Ravi Shankar Singh Bhadauria & Ors.*
(2007(2) Bom.C.R.(Cri.)205)
- (b) *Sopan Vithal Shinde Vs. State of Maharashtra*
2008(2) Bom.C.R. (Cri.) 463.
- (c) *Mrs. Kumudesh Bhandari Vs. Ms. Gopika Tapuriah and another.* **(1995 (3) Bom.C.R. 534)**
- (d) *Gopi R. Mallya Vs. Pushpa (Smt.)*
(1997 DGLS(Kar.) 233.)
- (e) *Balia Vs. Heerji*
(1968 DGLS(Raj.)26.)

11. The learned Advocate for the respondent No.1-complainant opposed grant of any relief to the petitioner. The respondent No.1-

complainant has also tendered the affidavit-in-reply opposing the prayers in this petition. The learned counsel made the following submissions :-

(I) The Trial Court had committed an error in dismissing the complaint under Section 203 of the Code of Criminal Procedure. The said order has been set-aside by the Sessions Court. There is no reason to interfere in the order passed by the Sessions Court.

(II) Verification statement of the complainant is recorded under Section 202 of the Code of Criminal procedure and documents on record *prima facie* make out a case for issuance of process under Section 499 of the Indian Penal Code. This factor was considered by the Sessions Court, while setting-aside the dismissal order and in pursuance to that the Trial Court has rightly issued the process against the petitioner.

(III) The accused has deliberately made the defamatory averments in the reply forwarded by her to her husband. The parties are related to each other and known to each other. The accused was required to believe that the averments in the reply were tainted to cause harm to the reputation of the complainant. The averments in the reply have

caused enormous mental torture and also it has caused harm to the reputation of the complainant in the society and among their relatives.

(IV) It is submitted that at the stage of issuance of process, the trial Court is required to consider the material on record and on the basis of *prima facie* case, the cognizance of the complaint has to be taken. The defence of the accused is that there was no intention or that the averments were made in good faith, are required to be considered at the stage of trial. Hence, the initial order passed by the learned Magistrate was contrary to the law and the same has been rightly set-aside by the Sessions Court. The learned Advocate for the respondent No.1 relied upon the decision in the case of **Jeffery J.Diermeier And Another Vs. State of West Bengal 2010 DGLS(Cri.) Soft 1307 (Supreme Court).**

12. The complainant and the petitioner are related to each other, as stated herein above. Admittedly, there is matrimonial dispute between the petitioner and her husband. The complainant is sister-in-law of petitioner-husband. In the complaint, it is stated that the accused was having grudge against the complainant and her husband

without any reason. At the same time, there were disputes between the petitioner/accused and her husband, which has resulted into the Court proceedings. The petitioner's husband forwarded a notice dated 25th March, 2015, through his Advocate, to the petitioner. It was stated that she has left the matrimonial home. It was also stated that she should return home within seven days from the receipt of the notice with four respected persons and she would give assurance that she would behave properly. In case of failure, the husband would be compelled to initiate appropriate proceedings in the Court. The said notice was replied by the petitioner, through her Advocate. The said reply was addressed to the husband on the address, which was mentioned in the notice by the petitioner's-husband. In the said reply alleged objectionable averments were made. It was stated that the petitioner is willing to cohabit with her husband, if he resides with her at Pune. It was stated that there should not be intervention of his parents, brothers and sister-in-law, since the petitioner is apprehending danger to her life at their instances. It was further stated that the husband shall also discontinue the illicit relationship with sister-in-law, and on this condition, the petitioner wife is willing

to cohabit with the husband. The learned Magistrate, after recording the verification statement, called for report under Section 202 of the Code of Criminal Procedure. On perusing the documents as well as the Police report, the learned Magistrate was pleased to observe that no case is made out under Section 499 of the Indian Penal Code. There was no intention to cause harm to the reputation of the complainant nor there was publication of defamatory statement. The Court also observed that there is family dispute between the petitioner and her husband. Notice sent by her husband was replied, wherein the disputed statement was made. It was further observed that the notice was specifically issued to the husband and therefore, there was no question of publication of the statement made therein. The reply was not published and it is specifically sent to the husband. Hence, the complaint was dismissed. The decision of the trial Court therefore, was based on sound reasoning and interference was not called for in the revision application preferred by the complainant. The Sessions Court has observed that the accused was fully aware that her husband was residing at Pune and in spite of that, the notice was sent on the address of husband of the complainant. The

accused has, therefore, defamed the complainant. The Sessions Court also observed that in the event of such statement being made in the plaint or written statement, filing of such plaint or written statement amounts to publication. Filing of the application under the Protection of Women From Domestic Violence Act by accused also comes under the category of publication. So also sent notice on the address of the complainant. It was addressed in the name of the complainant's husband as "care of". Therefore, there was possibility that the complainant's husband may read the same. The imputation in the reply forwarded by the accused appears to be defamatory in nature, said observation appears to be contrary, to averments in the complaint. The complaint does not refer to the fact that reply to the notice was also sent on the address of the husband of the complainant. The complaint does not involve issue of causing defamation, by filing the complaint under the Protection of Women From Domestic Violence Act or filing the plaint or written statement. The revisional court also inferred that the husband of the complainant may read the communication, which was sent to the complainant at " care of" address of her husband. The order of the

Sessions Court depicts non application of mind.

13. The dispute is primarily between the petitioner and her husband, and the alleged imputation was made in the reply sent to the husband. There was no intention to cause defamation to the complainant. Since the reply was forwarded to the husband of the accused, there was no question of publication of the same to the other persons. On the contrary, the complainant submitted the complaint to the Police Station with regard to the alleged imputation. The complainant, therefore, does not justify the prosecution under Section 499 of the Indian Penal Code. The complaint was filed apparently to cause harassment to the petitioner. The complainant has alleged that reply forwarded by the accused was read over by the relatives in the house of the complainant and the husband of the accused, which has resulted in mental agony to the complainant. Apart from the fact that statement is vague, the reply which was forwarded to the husband by the accused cannot be read over in public. The complainant is trying to implicate the accused in the said proceedings by exhortation. The finding of the Sessions Court in respect of address by mentioning " care of" is contrary to the record

and without verification of the notice issued by the husband of the petitioner dated 25th March, 2015, through his Advocate, which discloses that two addresses one at Pune and another at Nande Tq. Dhangaon. The complaint is, therefore, filed with *mala fide* intention to cause harassment to the petitioner. It would be abuse of process of law to continue such a prosecution.

14. In the case of **Sudhir Parihar Vs. Ravi Shankar Sing Bhadauria And Others 2007(2) Bom.C.R. (Cri.) 205** there was matrimonial dispute between the parties and in view of that, notices were sent through their Advocates. On account of reply to the notice, the complaint for defamation was filed. This Court observed that the alleged defamatory statements were conveyed by the accused involving intention in the dispute. The Court therefore observed as under :-

" The essence of the offence of defamation, is the harm caused to the reputation of a person, to makes out a case of defamation, publication must be with intention to harm prestige of a person and it is to be shown that it has affected his prestige of the complainant in the society.

15. In the case of **Sopan Vithal Shinde Vs. State of Maharashtra 2008(2) Bom.C.R. (Cri.) 463**, this Court has observed that there must be publication of imputation intending to harm reputation of the person, who is defamed. The person who alleged defamation must prove that in estimation of others, his moral or intellectual character is lowered down as a result of false such false imputations.

16. In the case of **Mrs. Kumudesh Bhandari Vs. Ms. Gopika Tapuriah and Another 1995 (3) Bom. C.R. 534** this Court has dealt with the complaint of the defamation. There was matrimonial dispute between the parties. The complainant has alleged that the accused had filed a petition for custody of the children, wherein allegations of unchastity were made with view to dis-entitle the complainant, to the custody of the children. The Court observed that the case would fall within the ambit of Exception 8 of Section 499 of the Indian Penal Code.

17. Similarly, in the case of **Gopi R. Mallya Vs. Pushpa (Smt. 1997 DGLS(Karnataka High Court.) 233**, it was observed that the statement made in the divorce petition cannot be said to be irrelevant as the case of the accused was based on the said statement.

18. In the decision relied upon by the Advocate for the respondent in the case of **Jeffrey J. Diermeier And Another Vs. State of West Bengal 2010 DGLS(Cri.)Soft. 1307**, the Hon'ble Supreme Court has observed that to constitute the defamation under Section 499 of the Indian Penal Code, there must be imputation and such imputation must have been made with intention to harming or having reason to believe that it will harm the reputation of the person about whom it is made. By the offence of the defamation, harm is caused to reputation of the person. It would be sufficient to show that the accused is involved or known or reason to believe that imputation made by him would harm the reputation of the complainant irrespective of whether the complainant actually suffered directly or indirectly from the allegedly imputation. It was also observed that no imputation is said to harm the person's reputation unless that imputation directly or indirectly lowers the moral or intellectual character of that person or lowers the character of that person in respect of his caste or his calling or lowers the credit of that person in the estimation of others. The Hon'ble Supreme Court has also observed that, the stage of recording of evidence had not reached and, therefore, in the absence

of any evidence on record, it is difficult to give a finding that the accused has satisfied the requirement of " good faith" and public good" so as to fall within the ambit of the Tenth Exception to Section 499 of the Indian Penal Code. It will neither be possible nor appropriate for this Court to comment on the allegations levelled by Respondent No.2 and record a final opinion whether these allegations do constitute defamation. Reading the complaint as a whole, I find it difficult to hold that a case for quashing of the complaint under Section 482 of the Code has been made out.

19. In the present case, on reading the complaint itself, it can be seen that the required ingredients to constitute the offence of the defamation are not made out. The primary requirement i.e. intention to cause harm, is completely absent in the complaint. The reply was addressed to the husband by the accused. There is matrimonial dispute between the parties. The imputation was not addressed to the complainant or her husband. The attempt of the accused was to join the society of her husband for cohabitation. In the aforesaid decision of the Hon'ble Supreme Court, it is also observed that it is neither feasible nor possible to lay down rigid test for deciding

whether accused person acted in " good faith" and for " public good' under the Exceptions. The question has to be considered on the facts and circumstances of each case having regard to the nature of imputation made, the circumstance on which it came to be made and the status of the person, who makes the imputation as also the status of the person against whom, imputation is rightly made. These and most of other considerations would be relevant and required to be considered for deciding the plea of " good faith" and "public interest". It was also observed that all these are questions of fact and a matter for evidence.

20. In the present case on appreciating the factual aspects the learned Magistrate dismissed the complaint, which decision was reversed by the Sessions Court. In the facts and circumstances of the present case, I find that the Sessions Court has committed an error in setting-aside the order of the trial Court. The order passed by the Trial Court was based on the complaint, verification statement, report under Section 202 of the Code of Criminal Procedure, and, therefore, interference in such an order was not warranted. The order of the

revisional Court also appears to be extraneous as it contains the material, which was not spelt out in the complaint. The order of the Sessions Court, therefore, requires to be set-aside. It would be abuse of process of law to prosecute the petitioner. This is a fit case to exercise inherent powers under Section 482 of the Code of Criminal Procedure. Hence, I pass the following order.

ORDER

1. Criminal Writ Petition No. 1217 of 2017 is allowed.
2. The order passed by the learned Additional Sessions Judge, Jalgaon, in Criminal Revision Application No. 202 of 2015 dated 5th April, 2017, is hereby quashed and set-aside.

[PRAKASH D.NAIK, J.]